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Hamidović v. Bosnia and Herzegovina: Statement of facts & Questions to parties

EctHR (24.03.2016) - <http://bit.ly/2ciy8II> - The applicant, an adherent of a group advocating the Saudi-inspired Wahhabi/Salafi version of Islam, was summoned to appear as a witness in a trial involving other adherents of the group, who attacked the US Embassy in Sarajevo in October 2011. During the trial the applicant refused to remove his cap in the courtroom as ordered and was expelled from the courtroom. An Appeals Chamber reduced the fine charged but otherwise found the order reasonable, holding that the requirement to remove any and all headgear at the premises of public institutions was one of the basic requirements of the life in society and that in a secular State, such as Bosnia and Herzegovina, any manifestation of religion in the courtroom was forbidden. The fine was converted into a prison term of 30 days. The Constitutional Court found no breach of ECHR Articles 9 (freedom of religion) and 14 (discrimination), and the applicant brought these complaints to the ECtHR.

Statement of facts

The applicant, Mr Husmet Hamidović, is a citizen of Bosnia and Herzegovina, who was born in 1976. He is represented before the Court by Mr O. Mulahalilović, a lawyer practising in Brčko.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows. On 28 October 2011 M. J., an adherent of the local group advocating the Saudi-inspired Wahhabi/Salafi version of Islam (1), attacked the US Embassy in Sarajevo. In April 2002 M. J. and two other adherents of that group were indicted on terrorism charges in relation to that event.

In the context of that trial, the State Court summoned the applicant, who belongs to the same religious group, to appear as a witness on 10 September 2012. The applicant appeared, as summoned, but refused to remove his cap, despite an order of the President of the Trial Chamber to do so. He was then expelled from the courtroom, convicted of contempt of court and sentenced to a fine of 10,000 convertible marks (BAM) under Article 242 of the Code of Criminal Procedure of Bosnia and Herzegovina.(2)

On 11 October 2012, an Appeals Chamber of the same court, reduced the fine to BAM 3,000 and upheld the remainder of the first-instance decision.

It held that the requirement to remove any and all headgear at the premises of public institutions was one of the basic requirements of the life in society.

It further held that in a secular State, such as Bosnia and Herzegovina, any manifestation of religion in the courtroom was forbidden.

As the applicant had failed to pay the fine, on 27 November 2012 the fine was converted into 30 days of imprisonment pursuant to Article 47 of the Criminal Code of Bosnia and Herzegovina. That decision was upheld on 13 December 2012. The applicant served his prison sentence immediately.

On 9 July 2015 the Constitutional Court found no breach of Articles 9 and 14 of the Convention, fully endorsing the reasoning of the State Court.

At the same time, it found a breach of Article 6 of the Convention because of the automatism with which fines were converted into imprisonment and ordered that Article 47 of the Criminal Code of Bosnia and Herzegovina be amended.

However, it decided not to quash the decision converting the fine into imprisonment in this case relying on the principle of legal certainty.

Relevant domestic law

The relevant part of Article 242 § 3 of the Code of Criminal Procedure of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 8/08, 12/09, 16/09, 93/09 and 72/13) reads as follows:

“Should ... a witness ... cause a disturbance in the courtroom or fail to comply with an order of ... the presiding judge, ... the presiding judge shall warn him or her. If the warning is ineffective, ... the presiding judge may order that the person be expelled from the courtroom and be fined in the amount of up to BAM 10,000. ...”

Article 47 of the Criminal Code of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15 and 40/15) reads as follows:

“(1) Fine shall not be collected by force.
(2) If a fine is not paid within the period determined in the judgement, the court shall, without delay, convert the fine into imprisonment.
(3) The fine shall be converted into imprisonment in such a way that ... each BAM 100 started is converted into 1 day of imprisonment, provided that it does not exceed the punishment prescribed for that particular offence.
(4) If the convicted person has only paid a portion of the fine, the remaining amount will be proportionally converted into imprisonment and if he then pays the remaining amount, the execution of imprisonment ceases.”

Complaints

The applicant complains under Articles 9 and 14 of the Convention because he was punished for having refused to remove a religious cap in the courtroom.

Questions to the parties

1. Has the punishment of the applicant because of his refusal to remove a religious cap in the courtroom amounted to a breach of Articles 9 and/or 14 of the Convention? Notably, is the prohibition of the wearing of religious symbols applied equally to all those who appear in the courtroom, including imams, bishops, nuns and rabbis? The Government are requested to provide the relevant domestic case-law in this connection, if any.
2. The Government are also requested to submit the decision (zaključak) concerning the wearing of religious symbols in the courtroom adopted by the High Judicial

and Prosecutorial Council of Bosnia and Herzegovina on 21 September 2015, the related study (analiza) prepared by the Council, any and all submissions of the Islamic Community of Bosnia and Herzegovina and other third parties deposited with the Council in this connection, any and all replies of the Council and all other relevant documents from that file.

Footnotes

- (1) According to International Crisis Group, the Salafiyya began as a movement of modernist reform in the Middle East in the late nineteenth century. Its founders, the Persian Shiite Jamal al-Din al-Afghani (1838-1897) and the Egyptian Sunni Mohammed Abduh (1849-1905), were concerned above all to enable the Muslim world to rise to the challenge of Western power. This reformist combination of selective "back to basics" fundamentalism and selective modernism (accepting Western science and political ideas, notably liberal democracy and constitutional government) went into eclipse following the First World War. In the political turmoil in the Middle East following the destruction of the Ottoman empire, the abolition of the Caliphate, the expansion of Jewish settlement in Palestine and the establishment of British and French protectorates (Iraq, Palestine, Syria, Transjordan), the Salafiyya movement evolved in a markedly anti-Western and conservative direction under the guidance of Rashid Rida (1865-1935). This involved an explicit rapprochement from the late 1920s onwards between the Salafiyya movement and the Wahhabi doctrines championed by the triumphant Al-Saud dynasty in Arabia (see International Crisis Group's report Understanding Islamism of 2 March 2005, p. 9).
- (2) The convertible mark uses the same fixed exchange rate to the euro that the German mark has (1 euro = 1.95583 convertible marks).

Bosnia women protest at ban on headscarf

About 2,000 women in Bosnia have protested against a ban on wearing Islamic headscarves in courts and other legal institutions

BBC (07.02.2016) - <http://bbc.in/1Tity83> - The ban includes all religious symbols but explicitly mentions the hijab.

The women marched for around an hour through the capital, Sarajevo.

Hijab-wearing was banned by the communist authorities while Bosnia was still part of the former Yugoslavia until 1992, when it declared independence.

The protest came in response to a decision by Bosnia's high judicial council, which supervises the functioning of the judiciary, to ban "religious signs" in judicial institutions.

Some of the women held signs saying "The hijab is my right".

Protest organiser Samira Zunic Velagic said the ban was a "serious attack against Muslim honour, personality and identity" and said it was aimed at depriving Muslim women of their right to work.

The ban has also been condemned by Muslim political and religious leaders.

Muslims make up about 40% of Bosnia's 3.8m population. The others are mostly Orthodox or Catholic Christians.
